80-244

Supreme Court, U. S.
FILED
AUG 18 1980
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

_____ TERM, 1980

NO. 80-244

W. C. ALDRIDGE

Petitioner

V.

STATE OF GEORGIA

Respondent

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE UNITED STATES

O. L. CRUMBLEY
408 American Federal Building
Macon, Georgia 31201

Attorney for Petitioner

ROWLAND PRINTING COMPANY - 788-5472 - MACON, GEORGIA 31206

QUESTIONS PRESENTED FOR REVIEW

1) Does the sworn statement of two confessed burglars, standing alone, and without any further investigation or information, provide sufficient probable cause for the issuance of a search warrant.

2) Did the intolerable intensity and scope of the police officers, in executing this search warrant, and turning it into a general search and seizure, taint the results of that search so that none of the items seized would be admissable in court against the defendant.

PARTIES TO THE PROCEEDING

Same as in the caption.

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_____ TERM, 1980

No. _____

W. C. ALDRIDGE

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V.

STATE OF GEORGIA

Respondent

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE UNITED STATES

W. C. Aldridge respectfully petitions for a writ of certiorari to review the judgment of the Court of Appeals of Georgia in the above captioned case.

OPINION BELOW

The decision of the Court of Appeals of Georgia is published in the Advance Sheets as 153 Ga. App. 744, but we believe it has not yet been published in the hard bound Reports. We include a copy of this decision in the Appendix. (App. A, P. _____).

JURISDICTION

The judgment of the Court of Appeals of Georgia was entered on February 15, 1980; a motion for rehearing in

the Court of Appeals was denied March 6, 1980; a petition for certiorari to the Supreme Court of Georgia was denied on April 23, 1980; and a motion for a reconsideration in the Supreme Court of Georgia was denied May 20, 1980. The jurisdiction of this honorable Court is invoked under 28 USC Sect. 1257(3).

STATUTES INVOLVED

This case requires an interpretation of the Fourth Amendment to the Constitution of the United States, which reads:

> "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

And Article I, Section I, Paragraph X of the Constitution of the State of Georgia of 1976, which reads:

> "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated; and no warrant shall issue except upon probable cause, supported by oath, or affirmation, particularly describing the place, or places, to be searched, and the persons or things to be seized."

STATEMENT OF THE CASE

On April 20, 1977, Officer A. J. Mathern, of the Macon Police Department, prepared an affidavit applying for the issuance of a search warrant. A copy of this affidavit is appended as "Exhibit B". In this affidavit, Officer Mathern stated that two named individuals had given him a detailed sworn statement in which they stated that they, along with another named individual, had burglarized a local business, and had taken from the

premises two described outboard motors. They alleged that they had sold these motors to your petitioner. The affidavit shows on its face that no Police Officer made any effort to corroborate, or substantiate the statement of the two burglars, did not submit their affidavit to the issuing officer, and relied solely upon their statement.

Based upon this affidavit, the Judge of the Recorder's Court of the City of Macon issued a search warrant authorizing the Police to search the residence at 644 Main Street for the two described outboard motors. A copy of this search warrant is appended as "Appendix C".

During the course of this search, the Police also seized sixty-seven items, in addition to the two outboard motors, including such diverse items as silverware, televisions, firearms, microscope, cameras, check writing machines and notary stamps, a copy of the return made by the Officers being attached hereto as "Appendix D".

Prior to the trial of this case, the defendant filed his motion to suppress evidence citing both the State and Federal Constitutional provisions and citing both State and Federal decisions. The trial court denied defendant's motion on August 2, 1978 and the matter proceeded to a trial by jury, where the defendant renewed his motion to suppress the evidence obtained against him, and any testimony relating thereto, which motion was denied by the court. Following his conviction, the defendant filed his motion for a new trial in the Superior Court of Bibb County, which denied your petitioner's motion on the 15th day of August, 1979. A timely appeal was then filed to the Court of Appeals of Georgia which resulted in the Court's decision of February 15, 1980, from which petitioner now seeks a review. Petitioner then moved for a re-hearing in the Court of Appeals, and upon its denial, applied to the Supreme Court of Georgia for certiorari, which was denied on April 23, 1980, and a subsequent motion for reconsideration was denied on May 20, 1980. In all of

these petitions, your petitioner relied upon both the Constitution of the United States and Federal decisions relating thereto, and the Constitution of the State of Georgia, and Georgia decisions relating thereto.

ARGUMENT

We concede, at the outset, that an informant's admissions against his penal interest lends some weight to its credibility, but we believe this to be a case of first impression where the issuing magistrate authorized a search warrant based solely upon an informant's statement against his penal interest without corroboration of any kind. None of the cases cited by the Court of Appeals sustains their position that they authorize the issuance of a search warrant without some corroborating circumstances. In the case of Smith v. State, 136 Ga. App. 17, 19 - 20 (220 SE 2d 11) the Police had information from a confidential informer who had given information on two prior occasions which had led to three arrests and whose reliability had been established. In addition, the Officer applying for the warrant had previously interviewed other sources who stated they had bought, or seen, drugs at the defendant's home. Furthermore, Police records revealed the defendant had previously been arrested for sale of drugs and possession of marijuana. In the present case, there is no evidence at all that the Police had ever seen, or known, either of the two burglars and knew nothing at all regarding their veracity or reliability. There was also no confirmation from other sources of this defendant's supposed criminal activity, nor was there evidence that he had previously been arrested for anything.

In Reynolds v. State, 142 Ga. App. 549(2) (236 SE 2d 525) it appeared from the affidavit that the Officers' information was the admitted burglar who had stolen the items and sold them to Reynolds, AND THAT THE OFFICER VERIFIED THE INFORMATION ABOUT THE BURGLARIES.

In United States v. Harris, 403 U.S. 573 (91 SC 2075, 29 LE 2d 713) the issuance of a search warrant was authorized where the informant was testifying against his own penal interest AND the Police Officer found that, on interview, the informant was prudent, AND information that the informant had personal and recent observation of the suspect's criminal activity, AND THE INFORMANT'S INFORMATION WAS CORROBORATED BY THE POLICE OFFICER'S PERSONAL KNOWLEDGE.

Nor does the case of United States v. Rosenbarger, 536 F 2d 715 sustained the position taken by the Court of Appeals. Headnote 3 of that decision holds that probable cause for the issuance of a warrant to search the defendant's home was established where the affidavit in support of the warrant contained information from an identified informant implicating herself in criminal activities, AND WHERE STATEMENTS OF THE INFORMANT WERE VERIFIED BY INDEPENDENT POLICE ACTION.

It is, therefore, apparent that none of the decisions cited by the Court of Appeals sustained their ruling that probable cause exists for the issuance of a search warrant based entirely, and solely on information provided by the criminal for, in each case cited by the Court of Appeals, the Police had conducted an independent investigation of their own to verify the truthfulness of the information given them, at the very least, to establish that the crime had, in fact, been committed.

We further respectfully urge that the contention of the Court of Appeals that the information provided by the informant was corroborated by a check drawn on the defendant is meritless. The check, itself, was obtained from the informant, himself, which places us back in our original position that the Police had no information except that given them by the informant. In addition, the

check, itself, was not contraband; was not made payable to the burglar; did not show that it was for the purchase of any stolen merchandise; and did not, in fact, show on its face that Mr. Aldridge had given it to the burglar, or that it had anything at all to do with a burglary, or stolen merchandise. It was simply a check made payable to cash in the amount of twenty-five dollars and could not, therefore, be considered corroboration of any crime, since it could have represented an infinity of possibilities.

While the Courts have given great weight to the testimony of an informant which is against his penal interest, several Federal decisions have specifically pointed out that such information, standing alone, and uncorroborated by any personal observation or knowledge on the part of the Police Officer, or other person executing an affidavit to be used for the issuance of the warrant, is not sufficient probable cause for issuance of the warrant. (Chin Kay v. U.S., 311 F 2d 317; Sykes v. U.S., 312 F 2d 232; and Baysden v. U.S., 271 F 2d 325.) Since the Court of Appeals of Georgia has issued its judgment in contravention of the requirements of the Fourteenth Amendment, and in conflict with the Federal decisions cited, we move this honorable Court to grant certiorari and reverse the Court of Appeals of Georgia.

THE WARRANT WAS ILLEGALLY EXECUTED: Secondly, we complain that, having obtained a warrant to search the defendant's home for two outboard motors, the Police illegally executed this warrant by converting it into an unbridled, unrestrained, general exploratory search of the defendant's home and that the illegal action of the Police tainted the entire search.

That the Police conducted a general, exploratory search can hardly be denied. On page 12 of the transcript of the evidence before the committing court, we find the following:

"*A* I went to the house with a search warrant

for two outboard motors. We found the motors and I confisgated (sic) anything else that I suspected may be stolen to be checked. It (sic) it checks out all right, we'll give it back to him.

Q All right sir, but you pretty well just cleaned the house out, didn't you?

A Pretty well, yes sir yes, sir."

Again, on page 13 of the same transcript, we find the following:

"*A* All of those articles are down in the holding area to be checked.

Q To be checked to see if they are stolen?

A Some of them have already been checked. We haven't had time to go through all of them.

Q But you didn't know when you took them that they had been stolen.

Q But you didn't know when you took them that they had been stolen.

A No, sir.

Q You did not know which burglary they might have come from.

A I didn't know any of this, no, sir.

Q And you picked up anything that you thought might be stolen property and brought it down to be checked out.

A Anything I suspected, yes, sir."

The Court of Appeals disposed of this issue by taking the position that, whether or not the search was illegal, the point is moot, as none of these items were introduced as evidence against him. They further note that, since the inside of the defendant's home evidently resembled a

pawn shop, the Officer's conclusion that this property was also stolen does not appear grossly unreasonable.

The latter conclusion is totally without evidence upon which to base it. The record is entirely silent as to the number of people living in this home; their ages; their sex; or any other information concerning the occupants of this home. We respectfully submit that having more than one of some items is necessary for the peace and tranquility of the home and that it was unreasonable of the Court of Appeals to make the assumption they did.

As to their contention that the point is moot, we feel that the Court of Appeals has entirely missed the purpose of the prohibition against a general search and seizure. Its primary purpose was clearly to protect the privacy of a home without regard to whether or not anything of an incriminating nature was discovered during the search. It can not be disputed that there is no Court in this Country, State or Federal, which has the power to grant the Police a warrant authorizing a general, exploratory search of a citizen's home. It seems to me, and we submit to this honorable Court, that if no Court has the authority to issue such a warrant in the first instance, it necessarily follows that no Court has the authority to condone such a search after it has been made.

There is no principle of law more firmly embedded and more consistently followed in both the State and Federal jurisprudence than the principle that the law will protect and preserve the citizen in their right to the privacy of their homes. In the case of Warden v. Hayden, 387 US 294, 87 S. Ct. 1642, 18 LE 3d 782, Mr. Justice Douglas wrote a very lengthy opinion in which he stressed the necessity of preserving the privacy and sanctity of the home from general searches and traced the evils of such a search from the Starr Chamber trials in England to date. The case of Stanford v. Texas, 379 US 476, 85 S. Ct. 506, 13 LE 2d 431 denounced general searches as being "the worst instrument of arbitrary power, the most

destructive of English liberty, and the fundamental principles of law that ever was found in an English law book, because they placed the liberty of every man in the hands of every petty officer."

The actions of the Police in this matter were specifically condemned in the case of Stanley v. Georgia, 394 US 557, 89 S Ct. 1243, 22 LE 2d 543, at page 553, when the Court held:

> ". . . the Court emphasized that 'exploratory searches . . . can not be undertaken by officers with or without a warrant.' . . . this record presents a bald violation of that basic constitutional rule. To condone what happened here is to invite a government official to use a seemingly precise and legal warrant only as a ticket to get into a man's home, and, once inside, to launch forth upon unconfined searches and indiscriminate seizures as if armed with all the unbridled and illegal power of a general warrant."

But this is precisely what the Police did in the present case. They took what appeared to be a valid search warrant permitting the search for a specified object and, having entered the defendant's home, turned it into a general search for evidence of other crimes. But it is necessary, for the Police to have probable cause for believing that an item was the fruits of a crime before it could be seized, and mere suspicion, speculation or conjecture would not be sufficient to authorize its seizure. And yet the Police, in this case, by their own admission, were operating exclusively on suspicion. (US v. DiRe, 332 US 581, 68 S Ct. 222, 92 LE 210, headnote 9; Wong Sun v. US, 371 US 471, 83 S Ct. 407, 9 LE 2d 441, headnote 11; Byars v. US, 273 US 28, 49 S Ct. 248, 71 LE 520; Nardone v. US, 308 US 338; Silverthorne Lumber Co. v. US, 251 US, 385, 40 S Ct. 182, 64 LE 319.)

It is the contention of the defendant that, by reason of the intolerable intensity and scope of the general search and seizure conducted by the Police, everything they seized, including the outboard motors, was tainted by their illegal actions and should have been suppressed and not allowed in evidence on the trial of this case. The cases of Kremen v. US, 353 US 346, 77 S Ct. 828, 1 LE 2d 876, and US v. Masiello, 434 F 2d 33, at page 34, have soundly denounced similar activities on the part of Federal authorities. See also Go-Bart Importing Co. v. US, 282 US 344, 346, 51 S Ct. 153, 75 LE 374; Chimel v. California, supra; Terry v. Ohio, 392 US 1, 18, 88 S Ct. 1868, 20 LE 2d 889; and Von Cleef v. New Jersey, 395 US 814, 89 S Ct. 2051, 23 LE 2d 728.

We respectfully submit that there is no more worthy cause for the Court's protection than the privacy and sanctity of a citizen's home, and no action on the part of the Police which should be more roundly censored than where they have removed almost the entire contents of a citizen's home on the bare suspicion that some of it might possibly be fruits of a crime. Even though the intrusion of the Police might have been legal at its outset, all of their actions after entering this home were clearly illegal and the Court should, for this reason, exclude from evidence all of the items seized by the police by reason of the intolerable scope of their search and their subsequent rummaging around in this defendant's personal effects.

In conclusion, we urge upon this honorable Court that it grant certiorari and reverse the Court of Appeals of Georgia for the reason that the search warrant issued illegally and without probable cause and upon the further ground that the intolerable scope and intensity of the Police search tainted, and rendered inadmissable, any item seized in that search.

Respectfully submitted this 16th day of August, 1980.

O. L. CRUMBLEY
Attorney for Petitioner
408 American Federal Building
Macon, Georgia 31201
(912) 742-8546

APPENDICES

59119. ALDRIDGE v. THE STATE. Ba-10.

BANKE, Judge.

The defendant was convicted of theft by receiving stolen property and sentenced to three years' imprisonment. On appeal, he lists nine alleged errors.

The evidence showed without dispute that the defendant purchased two outboard motors immediately after they had been stolen in a burglary. The burglars were apprehended when they returned to the scene to wipe some fingerprints from a third outboard motor which had proved too heavy to carry away. Two of the burglars admitted to the police that they had sold the stolen motors to the defendant. In support of this statement, they produced a check for $25.00 purportedly signed by the defendant. Based on this information, the police obtained a warrant to search the defendant's home. The search resulted in the seizure of the two motors, along with various other items discovered during the course of the search which were not listed in the warrant but which the officers suspected to have been stolen. These items included rifles, cameras, radio and stereo components, television sets, and silverware sets, many of which had altered serial numbers. The defendant filed a motion to suppress, alleging that the search violated his constitutional rights. Held:

1. Probable cause clearly existed for the issuance of the warrant. The police had detailed, signed statements from two of the three burglars admitting that they had just sold the outboard motors to the defendant. Since this admission was against their penal interest, it was inherently credible. See *Smith v. State*, 136 Ga. App. 17, 19-20 (220 SE2d 11) (1975), cert. den. 425 U. S. 938 (96 SC 1671, 48 LE2d 179); *Reynolds v. State*, 142 Ga. App. 549 (2) (236 SE2d 525) (1977). See also United States v. Harris, 403 U. S. 573 (91 SC 2075, 29 LE2d 713) (1971); United States v. Rosenbarger, 536 F2d 715 (6th Cir. 1976).

Furthermore, the information was corroborated by the check drawn on the defendant's account. The case of *State v. Mabrey*, 140 Ga. App. 577 (231 SE2d 461) (1976), cited by the defendant, is inapposite. There, the warrant was issued on the basis of uncorroborated information supplied by an anonymous informant.

The issue of whether the police exceeded their authority in seizing the additional items from the defendant's home is moot, as none of these items were introduced as evidence against him. We note, however, that since the inside of the home evidently resembled a pawn shop, the officers' conclusion that this property was also stolen does not appear grossly unreasonable.

2. The defendant moved for a continuance at the outset of the trial, based on the state's alleged failure to provide him with a list of witnesses in response to his demand, filed pursuant to Code § 27-1403. The state contends that it did provide such a list in a timely manner.

If the court's ruling was error, and we do not hold that it was, it was clearly harmless. The only witness of whom defense counsel had no prior knowledge was a police officer whose testimony concerned only the burglary. The defendant, of course, was not implicated in the burglary, and there was no dispute that the outboard motors were in fact stolen.

3. In administering to the jury its oath pursuant to Code § 59-709, the clerk inadvertently stated that the defendant was "charged with the offense of terroristic threats," which was another, separate charge pending against him. The defendant's counsel immediately moved for a mistrial. The trial court responded by instructing the jury to disregard the previous oath, and the proper oath was thereupon administered. The court further explained to the jury that the first oath did not contain "the correct title of the charges brought against this defendant."

"The trial court has a broad discretion in passing on motions for mistrial, and its ruling will not be disturbed by the appellate courts unless it appears that there has been a manifest abuse of discretion and that a mistrial is essential to the preservation of the right to a fair trial. (Cits.) Where a motion for mistrial is made on the ground of inadmissable matters being placed before the jury, the corrective measure to be taken by the trial court also is largely a matter of discretion; and where proper corrective measures are taken and there is no abuse of that discretion, the refusal to grant a mistrial is not error. (Cits.)" *Bradham v. State*, 148 Ga. App. 89 (8), 94 (250 SE2d 801) (1978), rev'd. in part, on other grounds, 243 Ga. 638 (256 SE2d 331) (1979). We find that the corrective measures taken by the trial court in this case were sufficient to insure a fair trial and consequently hold that the denial of the motion for mistrial was proper. Accord *Carr v. State*, 4 Ga. App. 332 (3) (61 SE 293) (1908).

4. The defendant contends that the trial court erred in allowing one of the burglars to testify over objection that he had previously sold the defendant other stolen merchandise under circumstances which may fairly be termed suspicious. This evidence was relevant on the issue of whether the defendant knew or should have known that the outboard motors were stolen. See generally Code Ann. § 26-1806; *Birdsong v. State*, 120 Ga. 850, 853 (48 SE 329) (1904). In response to the defendant's objection, the trial court properly instructed the jury that the testimony was "solely related to the question of knowledge on his part at the time of the transaction for which he is now on trial." This enumeration of error is also without merit.

5. The state's failure to call as its witness a third burglar, who was just as accessible to the defense as to the prosecution, raised no presumption that the witness' testimony would have been favorable to the defense. Therefore, the court did not err in correcting defense

counsel when he attempted to argue to the jury that such a presumption existed. Accord *Harper v. State*, 129 Ga. 770 (6) (59 SE 792) (1907).

6. The sixth, seventh, and ninth enumerations of error are deemed abandoned for failure to provide argument or citation of authority in their support. See Code Ann. § 24-3615 (c) (2) (Rule 15 (c) (2)).

Judgment affirmed. McMurray, P. J., and Smith, J., concur.

[redacted]ARCH WARRANT

[redacted] IN THE RECORDER'S COURT, CITY OF MACON, Detective A.J. Mathern

[redacted]ALLY APPEARED BEFORE ME, THE UNDERSIGNED, WHO, BEING DULY SWORN, [redacted]SES AND SAYS:

That he (has reason to believe) (is positive) that (on the premises or curtilage known as) 644 Main Street, which is a white wood frame house with green trim and green painted redtop railing around the front porch and is located on the corner of Main Street and Willingham Court, Bibb County, Macon, Ga., which is occupied by a white male, 35-40 yrs.,

In above space described person and/or property to be searched, including complete description, location and occupant, if known.

In the City of Macon, Bibb County, Georgia, there is now being concealed certain property, namely

Two outboard motors - one is a twenty horsepower Chrysler, white in color, Ser. #3733 and one is a Honda 7½ h.p., white with blue trim, Model #B75K35D, Ser. #4005290

In above space describe property for which you wish to search.

Which is/are Fruits of a crime. Taken from Charlie Wood Marine Division, 806 Walnut Street, at approximately 2:40 a.m. on April 20, 1977.

In above space insert why property is subject to search and seizure, for example: contraband, non-tax paid whiskey, burglary tools, instrumentalities of a crime, fruits of a crime. Also state when and where crime occurred.

And that the facts tending to establish the foregoing grounds for issuance of a search warrant are as follows:

Matthew Heath (2388 Recreation Road) and Joe Reid (address - 863 Horningsida Drive), who are residents of Bibb County, Macon, Ga. did on the April 20, 1977 give Sgt. Hutcheson and Det. A.J. Mathern a detailed sworn statement in which they stated that they along with Lafayette Green (address - 1014 Lexington Street, Macon, Ga.) did burglarize Charlie Wood's Marine Division and take from the premises the two outboard motors described above.

Both Heath and Reid stated that they along with Green took the motors to the address of 644 Main Street and did sell the same to a white male who resides at that address. Both subjects also stated that the white male did give Heath a check for $25 for the motors and put the motors in his kitchen.

Due to the fact that they admitted and gave a signed statement to the fact that did take the motors from Charlie Woods, Detective A.J. Mathern and Sgt. W.L. Hutcheson do reasonablly believe that the above mentioned stolen articles are being stored at the above mentioned address, which is 644 Main Street.

In above space, give a detailed statement of the reasons you have, for believing the property is in the location you wish to search. Include personal observation or investigation, criminal record and reputation of the defendant. Hearsay may be used here, if informer has given you information, give detailed account of what informer told you. If informer has given reliable information in the past, so state. If space is insufficient, continue on blank sheet of paper, swear to affidavit on second page and attach to this page.

Deponent shows that, based on the above and foregoing facts and information, he has probable cause to believe that the aforesaid property is concealed upon the aforesaid (person) (premises or curtilage) [redacted] (Line Out Words Not Applicable) other vehicles) and is subject to seizure and makes this affidavit so that a search warrant may be issued for the aforesaid (person) (property or curtilage) [redacted] (Line Out Words Not Applicable).

Sworn and subscribed before me this 20 day of April, 19 77

Judge
THE RECORDER'S COURT, CITY OF MACON

A.J. Mathern
M.P.D. - Det. Division
Signature and title of officer seeking warrant

INSTRUCTIONS: Prepare one copy. Attach to Search Warrant when return is made before Judicial Officer.

EXHIBIT "B"

17a

SEARCH WARRANT NO. [illegible]

GEORGIA
BIBB COUNTY IN THE RECORDER'S COURT, CITY OF MACON

TO THE CHIEF OF POLICE AND POLICE OFFICERS OF SAID CITY AND TO ALL AND SINGULAR THE SHERIFFS, DEPUTY SHERIFFS AND MARSHALLS OF SAID STATE

Affidavit having been made before me by Detective A.J. Mathern

That he (has reason to believe) ~~(is positive)~~ that ~~(no person named)~~ (on the premises or curtilage known as) ~~(certain automobile described as follows)~~

644 Main Street, which is a white wood frame house with green trim and green painted rodiron railing around the front porch and is located on the corner of Main Street and Willingham Court; Bibb County; Macon, Georgia, which is occupied by a white male, 35-40 yrs. old,

In above space, describe person and/or property to be searched including complete description, location and occupant, if known.

In the City of Macon, Bibb County, Georgia, there is now being concealed certain property, namely

Two outboard motors - one is a twenty horsepower Chrysler, white in color, Ser. #5733 and one is a Honda 7½ h.p., white with blue trim, Model #B75K35D, Ser. #4005290

In above space describe property for which you wish to search.

Which~~is~~/are Fruits of a crime. Taken from Charlie Wood Marine Division, 806 Walnut Street, at approximately 2:40 a.m. on April 20, 1977.

In above space insert why property is subject to search and seizure, for example: contraband, non-tax paid whiskey, burglary tools, instrumentalities of a crime, fruits of a crime. Also state when and where crime occurred.

and, as I am satisfied that there is probable cause to believe that the property so described is being concealed ~~(no person named)~~ (on the premises or curtilage) ~~(certain automobile described as follows)~~, above described and that (Line Out Words Not Applicable)

the foregoing grounds for application for issuance of the search warrant exist. You are hereby commanded to search forthwith the ~~person~~ (premises or curtilage) ~~(certain automobile described as follows)~~ named, for the property (Line Out Words Not Applicable)

specified, and, making the search at any time in the day or night and, if the property be found there to seize it, leaving a copy of this warrant and a receipt for the property taken, and prepare a written inventory of the property seized and return this warrant and bring this property before me or some other judicial officer in and for said city, as required by law.

This 20th day of April, 19 77

Time of issue 12:40 o'clock P.M.

Judge
The RECORDER'S COURT, CITY OF MACON

THIS SEARCH WARRANT SHALL BE VOID IF NOT SERVED WITHIN TEN DAYS FROM DATE OF ISSUE AND, IF NOT SERVED, SHALL BE RETURNED TO THE ISSUING OFFICER ON OR BEFORE THE TENTH DAY.

INSTRUCTIONS: Warrant shall be prepared in duplicate and, when served, a copy left with the occupant. If property is unoccupied, warrant shall be left in a conspicuous place on the property. Warrant and accompanying affidavit shall be returned before the Judicial Officer signing the warrant.

18a

RETURN

I received the ~~same~~within search warrant on April 20, , 1977 and have executed it as follows:

On April 20, , 19 77 at one o'clock P.M., I searched the ~~(persons)~~ (premises or curtilage) (~~Strike out the words not applicable~~) described in the warrant and I left a copy of the warrant with No one at home at the time (Line Out Words Not Applicable) together with a receipt for the items seized.

The following is an inventory of property taken pursuant to the warrant:
(Enter below the exact inventory of property seized)

Room #1 - Bedroom

1 - Remington 12 ga. automatic Ser. #254521
1 - Winchester 44 mag. rifle, Ser. #3325877M
1 - Remington 1100 12 ga. automatic - Altered number #20571
1 - Japanise 7mm rifle, Ser. #6640
1 - Remington .22 rifle - no ser. #
1 - Topcon Camera 35 mm Ser. #7104374 w/vivitar lens 1:3.8
1 - roll of film and black bag
1 - polaroid Model 420 w/flash
1 - polaroid model 100
1 - Zenith tripod 9"
1 - Sylvania super eight sun gun
1 - Polaroid model 450 w/flash
1 - Filmo movie camera
1 - Pair 7X50 Taco binoculars, Ser. #T15299
1 - Minolta SRT101 camera with 1:1.4 lens, Ser. #2540852
1 - 1:2.8 lens
2 - light meters; one Sekonic and one is a Lentar
1 - Polaris autozone lens, 1:3.5, 80 to 210 mm
1 - Polaroid model 103 w/flash and blk. case
1 - Starvright tripod
1 - Graflex 16 mm projector, Model #920, Ser. #315373
1 - Bell & Howell Specialist projector, model 552, Ser. #37170
1 - Kodak Carousel slide projector, model 800, Ser. #605090
1 - Papermatic tape recorder, no ser #
1 - Toshiba calculator, model BC1216R, Ser. #D62619
1 - Paymaster check writing machine w/altered ser. #
1 - Speedwriting 900 checkwriting machine w/altered ser. #
5 - boxes Carousel slide trays w/slides
2 - Audiotronic cassette tape players, model 145, altered ser. #
1 - telephone, Western electric, Ser. AD11-71
1 - Olympic stereophonic eight track music system, model #T3505, altered serial numbers
1 - notary stamp - Janice Delle Booth

This inventory was made in the presence of no one was at home and I swear that this inventory is a true and detailed account of all property taken by me on the warrant.

Det. A. F. Williams

Subscribed and sworn to and returned before me this _____ day of _____, 19____

Judge
The RECORDER'S COURT, CITY OF MACON

IN RECORDER'S COURT
CITY OF MACON

SEARCH WARRANT

Number

IN RE: 644 Main Street

Search Warrant Return - Continued
644 Main Street

1 - Mac model 1900 stereo receiver, Ser. #2X253
1 - Microscope, Tasco Zoom 1200x, no ser. #
1 - Realistic Chromatic 112 AM/FM Stereo alarm clock
1 - Sony stereo cassette recorder, model TC134SB, Ser. #1028_ - Altered number
1 - GE portable blk. & wht. television, Ser. #52329066
1 - Realistic Custom Pro stereo headset, no ser. #
1 - Oster model 202 hairdryer, no ser. #
1 - set of Walco silverware, stainless, in a brown wooden box - box marked WBW w/cross swords
1 - set of Nobility plate silverware, no identifying marks
1 - Catalina blk. & wht. television, model 122-2000, Ser. #11300490
1 - Telematch 4 television screen set, altered ser. #
1 - VIP1250 hairdryer, ser. #60435
1 - Sharp speaker model SP300
1 - Courier attaché case, blk.
1 - air-conditioner, window unit - no identifying marks

Room #2 - Living room

1 - Underwood typewriter, No Ser. #
1 - Victor adding machine, no ser. number
1 - Audiotronic cassette recorder, model 145, no ser. #
1 - Sound design AM/FM eight track multiplex, model #4487, ser. #853317
1 - Motorola Quasar II color television console, ser. #F21710355
1 - Morse entertainment center and tape deck, no ser. #
1 - 5X6 ft. movie screen

Room #3 - Kitchen & Dining Room

1 - intercom, model 1M-9 with altered serial number
1 - Western Electric telephone, red, #C/D5004-72-S
1 - AM/FM Precor portable radio, portalbe model 731N, no ser. #
1 - Panasonic Radio, Multiband, Model T-100MD, no ser. #
1 - Ross Eight track stereo, Ser. #10736239
1 - Panasonic blk. and wht. portable television, Ser. #[illegible]
1 - Learjet Eight track AM/FM auto type, Model A-250, Ser. #109239
1 - Sound Design speaker, 8", model 608 no Ser. #
1 - Juliette AM/FM Stereo, altered serial #
1 - tool and dye kit (Numbers)

Room #4 - Bedroom

1 - Remington Rifle, model 700, 30/06 w/Redfield scope, Ser. #6575160 in a brown case
1 - Silvertone entertainment console - altered ser. #
1 - Singer sewing machine - no ser. #

Room #5 - Bedroom

1 - Honda 7½ h.p. outboard motor Ser. #4005290

1 - Chrysler 20 h.p. outboard motor, Ser. #5733

CERTIFICATE OF SERVICE

I, O. L. Crumbley, attorney for the plaintiff, do hereby certify that I have this date served a copy of the above and foregoing Petition for Certiorari upon the State of Georgia, by mailing a true copy thereof to the District Attorney of Bibb Superior Court, by mailing same in an envelope addressed as follows:

Mr. Willis Sparks
Assistant District Attorney
Bibb Superior Court
Bibb County Courthouse
Macon, Georgia 31201

I further certify that said mailing was by regular U. S. Mail, and that there was attached to said envelope sufficient postage to guarantee delivery thereof.

This 16th day of August, 1980.

O. L. Crumbley, Jr.

O. L. Crumbley

Supreme Court, U. S.
FILED
SEP 19 1980
MICHAEL RODAK, JR., CLERK

No. 80-244

IN THE

Supreme Court of the United States

OCTOBER TERM, 1980

W. C. ALDRIDGE,

Petitioner,

v.

STATE OF GEORGIA,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS OF GEORGIA

BRIEF IN OPPOSITION FOR THE RESPONDENT

Counsel of Record:
JOHN C. WALDEN
Senior Assistant
Attorney General

Of Counsel:
MICHAEL R. JOHNSON
Assistant Attorney General

ARTHUR K. BOLTON
Attorney General

ROBERT S. STUBBS, II
Executive Assistant
Attorney General

DON A. LANGHAM
First Assistant
Attorney General

132 State Judicial Bldg.
40 Capitol Square, S.W.
Atlanta, Georgia 30334
(404) 656-6344

QUESTIONS PRESENTED

1.

Whether an affidavit in support of a search warrant is legally sufficient if based on the reliable admissions against penal interest of two named informers.

2.

Whether the seizure of items named in a valid search warrant is rendered improper because other, unnamed items were seized in an arguably illegal manner during the same search, if said unnamed items were never introduced into evidence at trial.

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SUMMARY OF ARGUMENT

In his petition for a writ of certiorari, Petitioner argues two grounds in support of his contention that his conviction should be reversed.

First, Petitioner contends that an affidavit in support of a search warrant based on admissions against penal interest by named informers is insufficient as a matter of law. Petitioner's argument has been refuted previously by several courts, including this one. An affidavit based on admissions against penal interest contains the necessary element of reliability and is legally sufficient to support the issuance of a search warrant. In addition, on the facts of this case, the admissions against penal interest contained in the

search warrant affidavit were corroborated by independent evidence.

Petitioner's second contention is that the search in the instant case was rendered invalid because the police exceeded the permissible scope of the search warrant. This contention is also without merit. The search warrant on its face was valid, and the items named in the warrant were seized pursuant to its terms. The additional items seized were not introduced into evidence against Petitioner at trial, so even if it is assumed that they were seized illegally, no harm has resulted to Petitioner, and his conviction at issue in the instant case should not be reversed.

STATEMENT OF THE CASE

On May 12, 1977, Petitioner was indicted by the Bibb County Grand Jury for the offense of theft by receiving stolen property. Petitioner pled not guilty, and on September 12, 1978 was tried by a jury. He was found guilty and was sentenced to serve three years in prison.

Following the denial of his motion for a new trial, Petitioner appealed his conviction to the Georgia Court of Appeals. On February 15, 1980, said court unanimously affirmed Petitioner's conviction. Aldridge v. State, 153 Ga. App. 744, ___ S.E.2d ___ (1980). Certiorari was sought from and was denied by the Georgia Supreme Court.

Petitioner's petition for a writ of certiorari was docketed in this Court on August 18, 1980.

STATEMENT OF FACTS

In the early morning hours of April 20, 1977, the boat and motor business of Charles Guy Wood, Jr., was burglarized. (Trial transcript, hereinafter "T", at page 24). The burglars stole two outboard motors, a large twenty horsepower Chrysler motor and a smaller Honda motor. (T. 25, 26). The Chrysler motor was worth approximately $895.00; the Honda motor was worth approximately $595.00. (T. 27).

Sergeant A. J. Mathern, Jr., was the detective assigned to the case. His investigation disclosed the names of three suspects, Lafayette Green, Joe Reed, and Matthew Heath. All three admitted committing the burglary. (T. 53, 54), and

Reed and Heath stated that they had sold the motors to an individual who resided at 644 Main Street. (T. 55). Heath had received a $25.00 check and a tape player in partial payment for the motors. (T. 55).

In response to this information, Sergeant Mathern obtained a search warrant. (T. 56). The warrant was executed when no one was home. The motors were found in a back bedroom of the house. (T. 57). After the search, an arrest warrant was obtained for Petitioner and he was arrested.

Prior to trial, Petitioner filed a motion to suppress the two motors, contending that the search warrant was invalid for basically the same reasons as asserted here. [1/]

[1/] There was never a formal hearing on the motion to suppress. By mutual agreement of the State and the defense, the preliminary hearing transcript was used as the basis for the motion to suppress. Said transcript will be cited in this brief as "H.T."

At the hearing, Sergeant Mathern testified that upon obtaining the statements from Reed and Heath, he had sworn out an affidavit and had obtained a search warrant. (H.T. 3, 4). In executing the warrant, he had found the two motors in a back bedroom of the house, and had also found numerous other items which appeared to have altered serial numbers. (H.T. 6, 7). Sergeant Mathern had seized all of said items even though they had not been named in the warrant. (H.T. 9-12). The trial court denied Petitioner's motion to suppress.

Several witnesses testified for the State at trial. The victim and the two police officers essentially testified as to the details of the burglary. In addition, two of the burglars, Lafayette Green and Joe Reed, testified for the

State, but neither testified pursuant to a grant of immunity or a negotiated plea. (T. 93, 138, 139). Both freely admitted committing the burglary. (T. 78, 83, 126).

Lafayette Green testified that the three burglars had gone to Petitioner's house in the middle of the night to sell the motors. (T. 84). They negotiated a $200.00 price for the motors, even though it was recognized that the true value of the motors was closer to $1500.00. (T. 88). In partial payment, Petitioner gave Matthew Heath a check for $25.00 and a tape deck. (T. 88). Joe Reed's testimony essentially corroborated Green's. (T. 133-134). Both witnesses positively identified Petitioner. (T. 93, 140).

Petitioner testified in his own behalf, claiming that the two motors were nothing more than security for a loan of $200.00. (T. 155). Petitioner further explained the $25.00 check as an advance for "drinking money". (T. 155). Following his trial, Petitioner was found guilty of theft by receiving stolen property and he was sentenced to three years in prison.

REASONS FOR NOT GRANTING THE WRIT

A. THE AFFIDAVIT IN SUPPORT OF THE SEARCH WARRANT IN THE INSTANT CASE WAS LEGALLY SUFFICIENT BECAUSE IT WAS BASED ON THE RELIABLE ADMISSIONS AGAINST PENAL INTEREST OF TWO NAMED INFORMERS.

It is undisputed that the search warrant affidavit in the instant case was based on the admissions against penal interest of two of the three burglars, Joe Reed and Matthew Heath. In a nutshell, in their admissions, Reed and Heath stated that they had taken two outboard motors in the burglary and had sold them to a man residing at 644 Main Street. They further stated that, in partial payment, the man had given them a check for $25.00. 2/

2/ The search warrant affidavit, in its entirety, is contained as an appendix to Petitioner's brief. It will not be independently reproduced here.

In his petition, Petitioner contends that the admissions of Reed and Heath were insufficient as a matter of law to support the issuance of the search warrant. This contention is without merit. It is well settled that the validity of a search warrant affidavit is determined by a two-pronged test. First, the affidavit must detail the underlying circumstances which indicate the existence of criminal behavior. Second, the affidavit must show why said evidence of underlying circumstances is reliable. Aguilar v. Texas, 378 U.S. 108, 84 S.Ct. 1509, 12 L.Ed.2d 723 (1964); Spinelli v. United States, 393 U.S. 410, 89 S.Ct. 584, 21 L.Ed.2d 637 (1969).

Petitioner cannot seriously contend that the first prong of the test is not satisfied

by the affadavit. It is clear that the admissions of Reed and Heath indicated that criminal behavior, to wit: the receipt of stolen property, had taken place at 644 Main Street. The only issue is whether the affidavit, by its terms, contained sufficient information to establish the reliability of the information.

The admissions of Reed and Heath are reliable as a matter of law simply because they were adverse to the informers' penal interest. The fact that such statements show the requisite reliability to support a search warrant was established by this Court in United States v. Harris, 403 U.S. 573, 91 S.Ct. 2075, 29 L.Ed.2d 723 (1971), in which it was stated:

> "People do not lightly admit a crime and place critical evidence in the hands of the police in the form of their own admissions. Admissions of crime, like admissions against proprietary interests, carry their own indicia of credibility - sufficient at least to support a finding of probable cause to search .... [H]ere the informant's admission that over a long period and currently he had been buying illicit liquor on certain premises, itself and without more, implicated that property and furnished probable cause to search." 403 U.S. at 583-584.

Harris has been cited by numerous courts for the proposition that an informer's admissions against penal interest are sufficient to establish reliability and thus support the issuance of a search warrant. See United States v. Long, 449 F.2d 288 (8th Cir. 1971), cert. denied sub nom Tocco v. United States, 405 U.S. 974, 92 S.Ct. 1191, 31 L.Ed.2d 247 (1972); United States v. Golay, 402 F.2d 182 (8th Cir. 1974); United States v. Rosenbarger,

536 F.2d 715 (6th Cir. 1976), cert. denied, 431 U.S. 965, 97 S.Ct. 2920, 53 L.Ed.2d 1060 (1977); Cf. United States ex rel. DiRienzo v. Yaeger, 443 F.2d 228 (3rd Cir. 1971); United States v. Hunley, 567 F.2d 822 (8th Cir. 1977). The three cases cited by Petitioner in support of his contention [3] are not factually in point.

On the basis of the aforementioned precedents, it is clear that the affidavit in issue in the instant case was legally sufficient. Petitioner's contentions to the contrary are without merit.

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[3] Chin Kay v. United States, 311 F.2d 317 (9th Cir. 1962); Sykes v. United States, 312 F.2d 232 (8th Cir. 1963); Baysden v. United States, 271 F.2d 325 (4th Cir. 1959).

B. THE SEIZURE OF THE TWO BOAT MOTORS WAS PROPER.

It is undisputed that, when he executed the search warrant, Sergeant Mathern found the two boat motors on the premises. (H.T. 6). It is also undisputed that, during the course of the search, Sergeant Mathern also seized numerous other items which he felt were the fruits of criminal activity because of their nature and quantity and the fact that numerous items had altered serial numbers. (H.T. 7, 9-12) Petitioner contends that the seizure of items not named in the search warrant was improper and that the seizure of the boat motors was tainted to the extent that their seizure should also be deemed violative of Petitioner's rights under the Fourth Amendment.

Petitioner's argument is wholly without merit. Even assuming that the seizure of the unnamed items was improper, it is undisputed that none of the items were introduced into evidence at Petitioner's trial, and they were not even mentioned during the course of the testimony. Consequently, any alleged infringement on Petitioner's rights which resulted from the seizure of the unnamed items had absolutely no bearing whatsoever on the conviction at issue in the instant case, and therefore no reversal is warranted. To hold otherwise would be to expand the coverage of the exclusionary rule in an unprecedented and unnecessary fashion.

CONCLUSION

Since the affidavit which supported the search warrant was legally sufficient, the search was proper. Since the only items used against Petitioner at trial were the items named specifically in the search warrant, the seizure was proper. There has been no infringement of Petitioner's rights under the Fourth Amendment so as to warrant a reversal of his conviction. Consequently, Respondent respectfully requests that this Court deny the petition for a writ of certiorari.

Respectfully submitted,

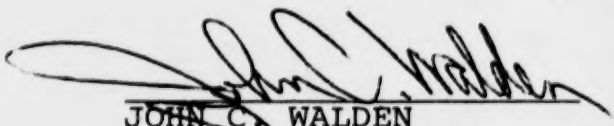
ARTHUR K. BOLTON
Attorney General

ROBERT S. STUBBS, II
Executive Assistant
Attorney General

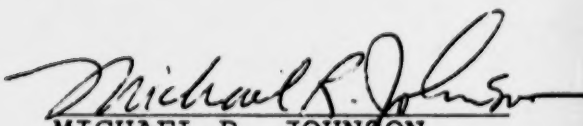
(Signatures Continued)

132 State Judicial
Bldg.
40 Capitol Square, SW
Atlanta, Georgia 30334
(404) 656-6344

DON A. LANGHAM
First Assistant
Attorney General



JOHN C. WALDEN
Senior Assistant
Attorney General
Counsel of Record for
the Respondent



MICHAEL R. JOHNSON
Assistant Attorney
General
Of Counsel

CERTIFICATE OF SERVICE

I. John C. Walden, Counsel of Record for the Respondent, and a member of the Bar of the Supreme Court of the United States, certify that in accordance with the rules of the Supreme Court of the United States, I have this day served a true and correct copy of this Brief for Respondent in Opposition upon Petitioner's attorney by depositing a copy of same in the United States mail, with proper address and adequate postage to:

Mr. O. L. Crumbley
Attorney at Law
408 American Federal Building
Macon, Georgia 31201

This the 17th day of September, 1980.

JOHN C. WALDEN
Senior Assistant
Attorney General
Counsel of Record
for Respondent,
State of Georgia